Remarks

The various parts of the Office Action are discussed below under similar headings.

Response to Arguments

The Examiner has taken the position the term "template" is replaceable with term "pattern". With that construction of the term "template", the Examiner states that clauses (b) and (c) of previously presented claim 1 are redundant. Applicant respectfully disagrees with the Examiner's position.

It is well settled that the use of two terms in close proximity in the same claim gives rise to an inference that a different meaning should be assigned to each. *Bancorp Services, L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1373 (Fed. Cir. 2004); *See also Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp.*, 93 F.3d 1572, 1579 (Fed. Cir. 1996) (stating that if two terms described a single element, "one would expect the claim to consistently refer to this element [with one or the other of the two terms], but not both, especially within the same clause"). While this inference is not conclusive, it is entitled to some weight, which the Examiner summarily ignores.

Regardless of whether "template" may be used interchangeably with "pattern", it is clear that clauses (b) and (c) of previously presented claim 1 are not redundant and, in fact, are directed to two distinct process steps.

Clauses (b) and (c) recite distinct process steps in the computer implemented process for the creation of a merged image. In particular, clause (b) states:

> "selecting a pattern wherein said pattern comprises a multiplicity of cells, each cell having n regions wherein n is the number of prepared base images and wherein each region of a cell is assigned to a different prepared base image".

Clause (c) states:

> "providing a merged image template wherein said template comprises a multiplicity of cells, each cell having n regions wherein n is the number of prepared base images and wherein each region of a cell is assigned to a different prepared base image".

Thus, clause (b) is directed to selecting a pattern having a multiplicity of cells and clause (c) is directed to providing a merged image template having a multiplicity of cells.

An exemplary illustration of these two steps is provided below. In Figure 1 of the specification, a cell having a 2 x 2 matrix pattern is selected. Each of the cells has n regions, wherein n is the number of prepared base images and each region of the cell is assigned to a different prepared base image. For illustrative purposes, a single cell is provided below.

1	2
4	3

The cell has n regions, where n is the number of base images. In this particular example, there are four base images.

Figure 1F of the specification illustrates providing a merged image template, as recited in clause (c). As shown in Figure 1F, the merged image template has a multiplicity of cells, each cell having n regions and each region of the cell is assigned to a different prepared base image. For illustrative purposes, a merged image template is provided below.

1	2	1	2	1	2	1	2	1	2
4	3	4	3	4	3	4	3	4	3
1	2	1	2	1	2	1	2	1	2
4	3	4	3	4	3	4	3	4	3
1	2	1	2	1	2	1	2	1	2
4	3	4	3	4	3	4	3	4	3
1	2	1	2	1	2	1	2	1	2
4	3	4	3	4	3	4	3	4	3
1	2	1	2	1	2	1	2	1	2
4	3	4	3	4	3	4	3	4	3
1	2	1	2	1	2	1	2	1	2
4	3	4	3	4	3	4	3	4	3

Based on the foregoing, it is apparent that clauses (b) and (c) of previously presented claim 1 are not redundant, as stated by the Examiner. Accordingly, the Examiner's position is not well supported and should be reversed.

Claim Rejections - 35 U.S.C. § 102

Claims 1-19 are pending in the application. Claim 1 is the sole independent claim. Notwithstanding the above, claim 1 has been amended for purposes of clarity. Accordingly, the prior rejections are now believed to be moot. Amended claim 1 reads as follows:

> 1. A computer implemented process for the creation of a merged image comprising the steps of:
>
> a. preparing at least two base images in digital format;
>
> b. selecting a pattern wherein said pattern comprises a multiplicity of cells, each cell having *n* regions wherein *n* is the number of prepared base images;
>
> c. applying the pattern to each base image to divide each base image into a plurality of cells each having *n* regions;
>
> d. providing a merged image template wherein said template comprises a multiplicity of cells, each cell having *n* regions wherein *n* is the number of prepared base images and wherein each region of a cell is assigned to a different prepared base image and the template is divided in the same pattern applied to the base images;
>
> e. selecting a mergable portion of each respective base image wherein the mergable portion corresponds to each region of each cell assigned to the respective base image;
>
> f. consecutively merging only the selected mergable portions of each respective base image into the merged image template in a non-overlapping manner to provide a single layer merged image.

In particular, claim 1 was amended to make it clear that the template is also divided into a pattern that is the same as that applied to the base images. In addition, claim 1 was amended to also clarify that the mergable portions of each respective base image is into the merged image template in a non-overlapping manner to provide a single layer merged image.

The primary reference relied upon by the Examiner for the new rejections is U.S. Patent No. 6,091,482 to Carter. Since claim 1 has been amended, the Examiner's rejections are now believed to be moot.

Applicant's invention is directed to selecting a pattern having a multiplicity of cells, wherein each cell has n regions that correspond to the number of base images. The selected pattern is then applied to each base image to divide each base image into a plurality of cells each having n regions. In addition, the template is also divided in the selected pattern that is applied to the base images.

In contrast, Carter has been found to teach that a first pattern is applied to the base images to divide the base images. (See Figure 5 and supporting text at (Col. 5, line 50- Col. 6, line 20). A different pattern, illustrated in Figure 6, is then used to create the merged image, as illustrated in Figures 7-9. Thus, Carter has not be found to select a pattern having a multiplicity of cells that is applied to each of the base images to divide each of the base image into a plurality of cells each having n regions. Likewise, Carter has not been found to disclose or reasonably suggest the template being divided in the selected pattern that is applied to the base images.

For at least these reasons, it is respectfully submitted that claim 1 distinguishes patentably over Carter. Accordingly the rejection of claim 1 under 35 U.S.C. §102(e) should be withdrawn.

Claims 2, 4-8 and 11-12 are dependent on claim 1. Therefore, claims 2, 4-8 and 11-12 are patentable for at least the same reasons set forth above for claim 1. Accordingly, the rejection of claims 2, 4-8 and 11-12 under 35 U.S.C. §102(e) should also be withdrawn.

Claim Rejections - 35 U.S.C. § 103

The Examiner also rejected claims 3, 9, 10 and 13-19 under 35 U.S.C. §103(a) as being obvious in view of one or more combinations of the following references: Carter, Delhi, DeLeeuw, Yokomizo, Morris, Silvers, Kimura, Ginter.

Carter was the primary reference for all of the claim rejections under 35 U.S.C. §103(a). As explained above, Carter has not be found to disclose or reasonably suggest selecting a pattern having a multiplicity of cells that is applied to each of the base images to divide each of the base image into a plurality of cells each having n regions. Likewise, Carter has not been found to disclose or reasonably suggest the template being divided in the selected pattern that is applied to the base images. Accordingly, Carter taken alone or in combination with the other references of record, fail to disclose or otherwise suggest the claimed invention. Accordingly, the rejections of claims 3, 9-10, and 13-19 under 35 U.S.C. §103(a) should be withdrawn.

Conclusion

In view of the foregoing, request is made for timely issuance of a notice of allowance.

Respectfully submitted,

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August 1, 2006
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